

Group II. Claims 10-22, drawn to a method of evaluating and testing the heart, classified in Class 600, Subclass 508.

Group III. Claims 23-27, drawn to an apparatus for monitoring physiological signals, classified in Class 600, Subclass 300.

The above restriction is respectfully traversed for the reasons set forth below. However, as required under 37 CFR 1.143, to complete the response, Applicant has provisionally elected Claims 10-22 of Group II.

The Examiner has considered the inventions to be distinct, each from the other, because the inventions of Groups I and II (process) and III are related as process and apparatus for its practice. The Examiner states that the "...apparatus as claimed can be used to practice another and materially different process not involving the heart (group II) but monitoring the lungs or stomach. In addition, the process as claimed (group I) can be used to practice another materially different apparatus not involving using training data but using data sensed previous from the patient or using set thresholds." Further, the Examiner states that "Inventions I and II are different methods and are therefore independent and distinct." The Examiner concludes by stating that the inventions "have acquired a separate status in the art because of their recognized divergent subject matter."

Applicant respectfully maintains that all of the claims of the present invention are directed to the same invention and should be examined together since the processes and apparatus are so closely related together as to justify an examination of all of the claims as a single invention. Furthermore, it is well established that restriction is not mandatory merely because the subject matter of the claims may

be directed to divergent subject matter. In the present application, since the claims are so closely related, the fields of search would necessarily be co-extensive as shown by the same classification of all the claims, Class 600. The fact that a apparatus and process may be searched in different subclasses, is not seen to be a material factor, at least insofar as the restriction requirement for the present invention is concerned.

In fact, according to MPEP 803, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." All claims being classified in Class 600 is clearly in support of this proposition. In light thereof, it is believed that an action on the merits of claims 1-27 in a single application is in order.

In view of the foregoing discussion, Applicant submits that the requirement for restriction is improper and should be withdrawn. However, as stated above, Applicant has provisionally elected Group II, Claims 10-22 drawn to a method of evaluating and testing the heart.

Although the appropriate fee for an extension of time is enclosed herewith, please charge any underpayment of fees to or credit any overpayment of fees to Deposit Account No. 03-2410, order 13331-101.


In accordance with Section 714.01 of the M.P.E.P., the following information is presented in the event that a call may be deemed desirable by the Examiner:

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Respectfully submitted,
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